

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SEVENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION NO : 13528 of 2004

Between:

M/s. P.V.R. Industries Ltd., a Company registered under the
Companies Act, 1956 having registered office at PVR Chambers, 6-3-
249/A, Banjara Hills, Hyderabad.

.....PETITIONER

AND

- 1 State of Andhra Pradesh, rep by the Engineer-in-Chief, R&B (Admn. &
EAP) Hyderabad
- 2 Executive Engineer, R&B, Eluru Division, Eluru, West Godavari District

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or Direction in the nature of Mandamus or otherwise declaring the inaction of the respondents in not extending the 7 years concession period proportionately in favour of the petitioner in terms of the G.O.Ms. No. 198 Transport, Roads and Buildings (R-1 Department) dated 18-10-1997 and the consequent agreement dated 2-11-1997 between the petitioner and the first respondent as illegal, arbitrary and bad in law and direct the respondents to act according to the aforesaid and consequently forbear the respondents from taking over or depriving the petitioner of the possession and control of mini by pass road to Eluru Town including the operation and maintenance of the toll gate and collection there from.

Counsel for the Petitioner: MR.VILAS V.AFZULPURKAR

**Counsel for the Respondents: GPS FOR ROADS & BUILDINGS
AND TRANSPORT.**

The Court made the following :

ORDER:

The petitioner is a registered Company undertaking contract works. As per G.O.Ms.No.198 Transport, Roads and Buildings (R-1 Department) dated 18-10-1997, the petitioner was granted the work of mini by-pass road situated at Eluru. In pursuance of the said G.O. the petitioner and the first respondent entered into an agreement on 02-11-1997 indicating the terms and conditions to be fulfilled by both parties regarding laying of the road and maintenance. As the petitioner agreed to bear the cost of construction and maintenance of the road, it was granted right to collect the toll for a period of seven years from the date of commencement of the project. The specific contention of the petitioner is that on 30-11-2001 the main road was opened, therefore, the traffic on the by-pass road reduced considerably. There was reduction in the vehicle traffic on the by-pass road being maintained by the petitioner. As per clause 1.11 of the agreement dated 02.11.1997, the period of concession has to be reworked. Since the first respondent did not take any decision regarding the reworking out the period of concession, the petitioner approached this Court through this writ petition seeking to declare that the action of the respondents in not extending seven years concession period proportionately in favour of the petitioner in terms of G.O.Ms.No.198, dated 18-10-1997 and the agreement dated 02-11-1997 as illegal, arbitrary and bad in law.

The respondents are contending that the petitioner who is agreed to construct drains and execute certain other works failed to execute, and the Government rejected the request of the petitioner for reworking the concession period beyond seven years through the order dated 22-03-2004, therefore, the question of considering the request of the petitioner for reworking out the concession period of seven years does not arise.

The order dated 22-03-2004 does not indicate whether the respondents took into consideration clause 1.11 of the agreement dated 02-11-1997 as

pointed out by the petitioner through his letter dated 20-10-2003. The petitioner therefore contends that the respondents did not take note of the condition under clause 1.11 of the agreement dated 02-11-1997 and passed the order on 22-03-2004 mechanically without giving due regard to the terms of the agreement more particularly clause 1.11. Though there was a direction from this Court to both parties to make a joint inspection regarding the works said to be undertaken by the petitioner, the joint inspection report dated 02-09-2004 filed by the respondents is not setting at rest, the disputed question of fact regarding the execution of certain works as per the terms of the agreement.

In the light of the above circumstances, the respondents are directed to consider the matter afresh in pursuance of the condition covered by clause 1.11 of the agreement dated 02-11-1997 and G.O.Ms.No.198, dated 18-10-1997 and pass appropriate orders regarding reworking out the concession period of seven years, within a period of four weeks from the date of receipt of this order. If there is any proposal to take over the road from the control of the petitioner, it shall be kept in abeyance till the date of passing a fresh order by the respondents.

Accordingly, the writ petition is disposed of.

27.10.2004

Note: Furnish Copy within two days

B/o

MRKR

To

- 1.The Engineer-in-Chief, R&B (Admn & EAP), State of A.P. Hyderabad.
- 2.The Executive Engineer, R&B, Eluru Division, Eluru, West Godavari District.
- 3.Two C.Cs to Government Pleader for R &B, High Court Buildings, Hyderabad. (OUT)
4. Two C.Cs to Government Pleader for Transport, High Court Buildings, Hyderabad. (OUT)
- 4.Two C.D.copies.